

## Central Law Journal.

ST. LOUIS, MO., MARCH 26, 1909.

### THE INTEGRITY OF APPELLATE COURTS.

We have referred in these columns heretofore to the serious charges of mal-administration charged against appellate tribunals in several of our states, notably California and Colorado, charges made not alone by the "yellow" press, but by conservative newspapers and even by members of the bar.

These charges do not imply venality or lack of personal integrity on the part of the various members constituting these courts, but principally the fact that these courts have been swayed largely by political and other improper considerations. Whether any of these charges are true or false, we are not advised, nor does that concern us for the purposes of this editorial, but recent decisions of some of these tribunals would lend color to, while they do not by any means prove, the charge that in some instances, considerations having no necessary connection with the law and the facts in the particular case, have apparently influenced the mind of the court.

Now comes report of a public discussion in the press of a debate in the Ohio legislature which involved the integrity of the Supreme Court of Ohio and in which it was charged that outside influences largely directed the course of judicial decision in that, the highest court of the state. Nor were these charges, so it is reported, very indignantly resented by the members of the bar present in the legislature.

We deeply deplore this growing lack of confidence in appellate tribunals. And we refer to the matter at this time, not that we may pander to any desire to create a national sensation by detailing the charges that have been made, but simply to call the attention of the profession to a growing distrust of appellate courts, which is due, as we apprehend, in no small measure to

attacks and insinuations of members of the bar themselves made either covertly to their clients or newspaper correspondents, or in the privileged debates of a state legislature.

If politicians or men subject to political or other improper influences are obtaining seats upon the appellate bench of this country, the fault is not wholly that of the people. If men of recognized judicial ability and scholarship do not obtain the nominations to such exalted offices, it is because of the *laissez faire* attitude of the American bar, and not the stubbornness of the voter. Wherever the local bar associations have unanimously united on nominations to be offered to the two leading political parties they have almost without exception found their nominations accepted by the press and at the party primaries.

We call upon the bar of the country to remove the reproach that threatens our appellate judiciary. We call upon them to resent promptly any unjust aspersion upon our courts of last resort or, on the other hand, without cringe or favor, to seek the immediate removal from the bench of any member of it who is known to them to be subject to improper influences or is incompetent, or both. This is the only alternative open to any member of the legal profession who does not wish to be classed with those members of the profession generally regarded as unethical and irresponsible.

For an attorney who has been "worsted" on appeal to blame the court for his defeat, to insinuate that the court did not consider the justice and law of the case, and to sow in his client's heart the seeds of rebellion and distrust of the highest court in his state is little short of treason. If what he charges against the court, of which he is an officer, is true, he is to share the larger share of the responsibility; if it is not true, he is a dangerous enemy to society and to the integrity of our political institutions.

We recognize fully the embarrassment under which an active practitioner necessarily labors in essaying properly to discharge his duty in seeking the removal of

appellate judges who have to his knowledge proven themselves incompetent and unfit to hold the exalted positions to which they have been elevated. To discharge this responsibility properly and to eliminate all personal fear or embarrassment in such proceedings we suggest that every bar association invest some one of their committees with power to hear and consider all complaints of this nature and to recommend what action may be necessary in the premises. This was done in the case of a certain federal judge in Florida and should be the universal practice.

Despite the utmost caution of the bar, unfit men will sometimes slip on to an appellate bench. What, then, shall be said of the opportunity for such men to secure such preferment in communities where the bar is indifferent to such nominations? Let the members of the profession shoulder more of the responsibility for unfit judicial representatives on the appellate bench and show less inclination to circulate the details of such unfitness in unprofessional channels.

## NOTES OF IMPORTANT DECISIONS.

**ANIMALS—THE LAW OF SELF DEFENSE APPLIED TO ANIMALS.**—At last the dumb beast has come into his own. He has been held to have the right of self defense in right of his master. When in the face of danger he has "retreated to the wall," or possibly in case of animals, we should say, "to the fence," he may then turn upon his pursuer and rend him or his master may perform this service in his behalf.

This astounding and epoch-making decision is by the Supreme Court of Idaho in the recent case of *State v. Churchill*, 98 Pac. 853.

In this case the complaining witness started out one morning with a pack of fine "Missouri bred" hounds. Eager for game these hounds soon spied a herd of cattle in defendant's barn-yard and essayed to round them up for their master. The defendant's cattle, retreating to the fence, bellowed for help, which their master promptly rendered by picking off with his rifle one of the choicest hounds.

The complaining witness established the good

character of his hounds which the trial court admitted, but which the supreme court declared should have no weight against the evidence of eye witnesses. The court said on this point: "Experts on dog lore testified that such hounds as these would neither chase nor harm domestic animals, and that they would pay no attention to them. Under the rule applicable in cases of homicide, the good reputation of the deceased may not be shown by the state until it is attacked by the defendant. Here the character, or rather the reputation, of the deceased dog was not attacked by the defendant, but only his positive acts and conduct were shown by defendant."

On the question of self defense, however, the court's argument is most notable, the court saying: "Here the defendant's cows and hogs were in their owner's field—a place where they had a lawful right to be. The hounds were trespassers in the first place. After they had been warned away and sticks and stones had been thrown at them, they became forcible trespassers—trespassers *vi et armis* as it were. The assault made by the trespassers upon defendant's cows and hogs was one of apparent danger and peril. So imminent was the peril that the hogs not only retreated but broke the fence, and became themselves kind of involuntary trespassers in the field of defendant's neighbor. The cows, in their alarm, retreated to the wall, and there gave the sign of distress, and sounded the bovine call for help. Now, the question arises: Was it *per se* malicious for defendant under these circumstances to come to the defense of his property, and, in ejecting the trespassing canines, to shoot them? The farmer is not required to fence against dogs. The dogs were unaccompanied by their master, and were undoubtedly running back and forth among defendant's cattle and swine. They were either chasing defendant's live stock or following the scent of a wild animal, neither of which their master owned. If they were only following the trail of a wild animal across the field and through the barnyard, and the defendant had been apprised of that fact and that their intentions toward his kine and swine were honorable and well disposed as would become English fox hounds born and bred in Missouri, then he would perhaps not have been justified in making a deadly assault on them. Of these things, however, he had no notice; besides, he was justified in considering the effect the conduct of the trespassers was having on his cows and hogs, and especially on his gravid animals. He was not obliged to wait until the injury was done and rely on an action for damages to recompense him."

## CONCERNING THE MEANING OF "FREEDOM OF THE SPEECH AND PRESS."

Syllabus of the contention: This constitutional guarantee of freedom of the press is violated whenever there is an artificial legislature destruction or abridgement of the greatest liberty consistent with an equality of liberty, in the disseminating ideas of conflicting tendency. The use of printing is but an extended form of speech. Freedom of speech and press is abridged whenever natural opportunity is in any respect denied, or its exercise punished, merely as such; that is in the absence of actual injury, or when by legislative enactment there is created an artificial inequality of opportunity, by a discrimination according to the subject matter discussed, or a discrimination as between different tendencies in the different treatment of the same subject matter, or according to differences of literary style in expressing the same thought. All this is now accomplished under our postal laws, and several other state statutes.

This contention involves the establishment of a new definition of "freedom of the press," based upon the viewpoint that the framers of the constitution intended by that clause to enlarge the intellectual liberty of the citizens beyond what it had theretofore been under the English system. Some state courts have erroneously assumed that the only purpose was to exchange a censorship before publication to criminal punishment after publication, without the least enlargement of the right to publish with impunity so long as no one is injured. The contention will be that the constitution changed liberty of the press by permission, to liberty as a right because thus only can all citizens be protected in their opportunity to hear and read all that others have to offer, and without which freedom unrestricted there is no intellectual liberty at all as a matter of right.

Before proceeding with the more critical study of the meaning of "freedom of the press," it is well that we should point out, and so far as possible bar, the principal avenues of error, which have heretofore misled our courts.

*The Danger of Precedents.*—Over a century ago Sargeant Hill cynically wrote this: "When judges are about to do an unjust act they seek for a precedent in order to justify their conduct by the faults of others." In matters of government, at least during the last few centuries, the evolution has been from despotism toward liberty. It follows from this that the danger and iniquity of blindly following precedents is nowhere so great as in the attempts to define the limits of constitutional liberty by reverting to the ancient misconceptions of it, because the older precedents were all made by tyrants, or those not far evolved from their attitude of mind. As we evolve to a more refined sense of justice, and rational conception of liberty, the old precedents must be constantly overruled. It is this which marks the progress of our race in its evolution to a truer and finer social liberty.

*Critical Study of Fundamentals.*—The utility of a brief historical review of the struggle for "freedom of the press" lies partly in this, that it shows how reluctant have been those in power to admit such freedom in practice, though seldom denying it in principle, and how shifty the powers of despotism have been in yielding up one form of repression as a concession to intellectual liberty, and at the same time creating a new method for effectually accomplishing the same impairment of intellectual opportunity. Such a study will also show how uniformly the moral sentimentalism of those in authority has prompted them to reinvent the same phrases in defense of each renewed attack upon freedom.

In order to understand the underlying impetus for all this, it must be remembered that when this problem first arose it was in every essence a religious one, and arose

where there was a union of church and state. Those who governed claimed to do so by divine right, and in their official acts represented the deity. The King could do no wrong, and to criticize him or his acts was an insult to the Almighty for whom he acted, just as much as though legalized religion had been blasphemed. From the viewpoint of such a church-state it was inevitable that those in authority should affirm that: "To say that religion is a cheat is to dissolve all those obligations whereby civil societies are preserved; and Christianity being parcel of the laws of England, therefore to reproach the Christian is to speak in subversion of the law."<sup>1</sup> "It was the doctrine of Coke (1551-1632), and even so late as Holt, C. J. (1689-1710) and Treby (1692-1701) that any law, that is, any statute, made against any point of the Christian religion, or what they thought was the Christian religion, was void."<sup>2</sup>

Of course, under the influence of such authority, it necessarily followed that no one had any right to think or speak, upon matters of religion, rulers, or governments, who had not been thereunto authorized by those who were recognized as possessing some divine authority to give or withhold such permission. But religion and government, according to the views then prevailing, encompassed everything, and so it followed inevitably, that "Free speech was a species of gift by the sovereign to the people."

Although we have all abandoned the original premises from which was drawn the conclusion that freedom of speech was a gift by the sovereign, yet most American judges seem to read the precedent so blindly that they adhere to the dogma that "freedom of the press" means a liberty by permission, and not a natural right guaranteed by the constitution. This is self-evident from almost every judicial utterance upon the subject, and in spite

of the supposedly self-evident fact that our constitution-makers intended to perpetuate a different rule. This error, like many of the others, comes from the uncritical adoption of precedents and the consequent failure to realize that our very different theory of government has overturned the foundation which alone justified the older authorities, and failing to realize this change, our courts also fail to see the necessity for repudiating the precedents which had no other foundation.

*The Tyrant's "Love" of Liberty.*—Another matter to be guarded against is the false pretense of a love of liberty which tyrants have always expressed, even in the very act of enforcing its destruction. Thus Lord Erskine tells us: "The public welfare was the burden of the preambles to the licensing acts; the most tyrannical laws in the most absolute governments speak a kind, parental language to the abject wretches, who groan under the crushing and humiliating weights."<sup>3</sup> In France, October, 1803, an act was passed by which all booksellers were prohibited from vending any book without having submitted it to the censor, "and as if to add insult to injury, the measure was introduced as one 'to secure the liberty of the press.'" \* \*

\* Napoleon the first did not consider liberty of the press as possible among Frenchmen, "who have a lively imagination," as it is in England, where "the people being brutal, are less likely to be influenced by writings, and are more easily kept in check by the throne and the aristocracy."<sup>4</sup>

In America we find a similar practice. Solemn judicial opinions, sometimes reek with pharisaical eulogies on the judicial love of liberty, as a prelude to the arbitrary punishment of a man for constructive contempt, without trial by jury or an opportunity to prove truth and justifiable motive before an impartial tribunal, and all because he had exercised his supposed right to express freely his opinion of a public

(1) *Reg. v. Taylor, Ventris*, 293. The later view in England seems different. See, 41 *Fortnightly Review*, 305.

(2) *Patterson's Liberty of the Press*, p. 67; citing 10 *St. Tr.* 75.

(3) Vol. 1, p. 48, Edition of 1810.

(4) Vol. 13, *Solicitors Journal & Reporter*, 51 & 70.

servant, the court. Here is a sample:

"It is a well known fact, that the bench and the bar have been, in this and all other countries, where the law has existed, as a distinct profession, the ablest and most zealous advocates of the liberal institutions, the freedom of conscience, and the liberty of the press; and none have guarded more watchfully the encroachments of power on the one hand, or deprecated more earnestly tendencies of lawless anarchy and licentiousness on the other. *The freedom of the press, therefore, has nothing to fear from the bench in this state.* No attempt has ever been made, and we may venture to say never will be, to interfere with its legitimate province, on the part of the judiciary, by the exercise of the power to punish contempts."

"The object of the clause in the Bill of Rights above quoted is known to every well informed man. Although the press is now almost as free in England as it is in this country; yet the time was in bygone ages, when the ministers of the crown possessed the power to lay their hand upon it, and hush its voice, when they deemed it necessary to subserve political purposes. A similar clause has been inserted in all the American constitutions, to guard the press against the trammels of political power, and secure to the whole people a full and free discussion of political affairs."<sup>5</sup> This eulogy was followed by abridging freedom of the press through an affirmance of an arbitrary punishment for constructive contempt, consisting of newspaper criticism. It is very dangerous to accept a tyrant's definition of liberty, even though he has the audacity to indulge in an extravagant praise of it.

*The Danger of Partisan Definitions.*—Another misleading guide for the ascertainment of what is meant by "freedom of the press," is the definitions of it framed by partisan defenders of it. These definitions nearly all have the defect that they generalize freedom to consist only in the

absence of that particular abridgement of it, which is then being specifically attacked. These defective generalizations are usually the combined product of defective intellectual vision and the dictates of expediency. It always seems as though those who have felt themselves called upon to defend against some particular abridgement of freedom, have been so overwhelmed by its importance that they have failed to define or defend freedom in general, possibly also influenced by the fear of including too much, and thus overtaxing the moral courage of the judge or legislator.

A recent illustration of this is furnished by Mr. Gompers of the American Federation of Labor. He conceives himself to be making a great fight for freedom of speech, and is fond of using the phrase as a shibboleth, but hastens into the public prints to explain that he neither contemplates nor desires such a thing as general "freedom of speech." He wants only freedom to advocate the boycott as against the restriction thereof by injunction. He deplores the havoc which would come from a general "Freedom of speech, and the press." Just at the time when I am writing this, a large section of the American press is working itself into a white-heat of opposition to the indictment of the publishers of the New York World for "a libel on the government of the United States," consisting in that paper's attempt to discredit the dealings of the government in the matter of the Panama Canal. Yet not one of these same papers would likely dream of defending a like freedom for anarchists to discredit the government in the hope of ultimately securing its peaceable abolition. There is no doubt either, but that practically all these same newspapers can be relied upon to justify our present suppression of all searching and enlightening sex-discussion. So, also, I know an anarchist, who, probably from fear of being wrongly suspected of believing in the forcible abolition of government, hastens to explain that though he esteems all government a nuisance, he still thinks it proper for govern-

(5) State v. Morrill, 16 Ark. 402-403, (1855).

ment to suppress even the fruitless advocacy of crime. Again, I know some radical and ardent sex-reformers who think it an outrage that plain spoken and searching sex-discussion is punishable, but see no objection to the suppression of an **equally plain spoken and searching** discussion of some of the more radical socialists and anarchists. So likewise we can find Protestants who desire unlimited liberty for themselves to criticise the religious tenets of their Catholic neighbors, and Catholics who desire to use a similar liberty against the theology of their Protestant neighbor, but both hasten to unite under our many remaining blasphemy statutes for the punishment of the atheist, who would deride the tenets of both. Yet each and all of these will seriously tell you how ardently they love "freedom of speech," but they will always so define that freedom, as to leave in full force the power to suppress those opinions of which they disapprove.

Let me illustrate still further: One reading a discussion of the licensing acts might easily conclude that freedom of the press meant only the absence of a licenser, all other forms of abridging free utterance being compatible with freedom. Another reading a definition of freedom of the press as these are sometimes formulated in relation to personal libel, would find himself in a rather hopeless situation if he should seek to apply that definition to a case where the abstract discussion of sex ethics was involved, and the claim was made that it was obscene because it tended to deprave the morals. Likewise there might be difficulty in using a definition of freedom, framed in relation to treason and seek to apply it to the case of a non-resistant anarchist. Errors of this sort have been frequently made in the misdirected effort to follow precedent, and have usually resulted in the definition of un-abridgable freedom of speech so as to permit its abridgement, as to every opinion "deemed injurious to the public welfare."<sup>6</sup>

(6) For fuller presentation see "The Judicial Destruction of Freedom of the Press," in *Albany Law Journal* for November, 1908.

Evidently the difficulty with most of these advocates of freedom is that they have no conception of freedom in general, and erroneously concluded that everybody is enjoying the greatest possible freedom when they feel themselves unrestricted, though this seeming liberty for them may be wholly due to the fact that they are utterly devoid of anything like a serious, carefully reasoned, opinion upon any subject whatever. If they had ever done any of the intellectual work which that presupposes, they would probably know something of the ease with which differences of opinion may arise upon every possible question, and of the importance of maintaining the other fellow's right to disagree.

What is "Interpretation?"—We are now to undertake a general discussion as to the interpretation of the constitutional phrase, "Congress shall make no law abridging freedom of speech or of the press," and we must first endeavor to get a clear idea of what we mean by "interpretation." Manifestly "interpretation" does not mean that we may inject words, phrases, or exceptions, into the constitutional phraseology. On the contrary, by "interpretation" we can only mean that we are to arrive at the meaning of the constitution by deductions made exclusively from the words actually used therein, unless these are ambiguous. If there is an ambiguity, in the significance of the words which guarantee our freedom of utterance and the right to hear, then these words may be interpreted in the light of the historical controversy which supposedly was settled by the constitutional clause in question. On the other hand, if the words themselves do not of necessity involve any ambiguity, then the historical conditions at the time of their adoption can be of no consequence to us in the matter of determining their meaning, because if the meaning is plain, the historical facts become immaterial and useless. If it can be done, the significance of the constitutional phraseology must be determined wholly and exclusively by deductions made from the words themselves.

The words "speech" and "press" certainly are not ambiguous. They cover every idea expressed vocally or presented on a printed page. Although it is manifestly absurd, yet some courts in effect have said that speech is not speech, whether expressed orally or on the printed page, unless it can be fairly classed as serious and ladylike discussion. Others advise us that speech is not speech unless it was uttered "not intending to mislead, but seeking to enlighten," and even then it is not speech at all if the other fellow happens to consider it to be "blasphemous, immoral or seditious," some add "obscene, indecent, filthy, or disgusting." So in a variety of ways courts, under the false pretense of "construing" them, have amended our constitutional guarantees, of freedom of speech and of the press, so as to inject into them exceptions which the judges think ought to be there, but which the framers of our constitutions neglected to insert.

When we say that speech isn't speech except when used in serious and lady-like discussion, such as does not irritate us, then we are indulging in sentimental nonsense, and I shall not be in the least inclined to change the epithet because in effect this has been often done by "learned" judges and "distinguished" courts. I should be equally certain that the word "freedom" when used in connection with "speech and press," was entirely free of ambiguity, were it not for the extraordinary meanings assigned to it by the courts, under the pretense of construing "freedom." It appears to me that here the judges, instead of interpreting the word "freedom," have interpolated into the constitution significations which are not at all implied in any of the words therein used. It seems to me that had our courts used common sense, instead of blindly following precedents established by those who never believed in free speech, and instead of adopting definitions of freedom framed by tyrants whose conception of it was repudiated by the American revolution, no embarrassing questions would ever have been raised.

If the constitution had said that "Congress shall make no law abridging man's freedom to breathe," no one would have any doubt as to what was meant, and every one would instantly say that of course it precluded Congress from passing any law which would prohibit breathing according to the mandate of a licensor, before trial and conviction, and that it would equally preclude the passage or enforcement of any law which would punish breathing merely as such upon conviction after the fact. No sane man could be found who would say that such a guarantee, to breathe without any statutory abridgement, only precluded the appointment of Commissioners who should determine arbitrarily what persons might be licensed to breathe and who should not be so licensed, and that it would still permit Congress to penalize all those who do not breathe in the specially prescribed manner, even though such criminal breathing had not injured anyone, nor could possibly do so according to any of the known laws of our physical universe, by which I include the actual knowledge of our bacteriologists as to the transmission of infectious diseases.

There is not the slightest reason to be given why "freedom" in relation to speech and press should be differently interpreted. The only explanation for having interpreted it differently is that the people generally, and judges and others in authority in particular, believe in freedom to breathe, but emotionally, at least, disbelieve in freedom of speech and of the press, and therefore they read into the constitution, meanings and exceptions which are not represented there by a single syllable or word, and which exceptions are therefore interpolated to accomplish a judicial amendment of the constitution, under the false pretense of "construing" it, only because the judges think, *or rather feel*, that the constitution ought not to guarantee freedom of speech and of the press, for those matters which stimulate their emotional aversion, and so they dogmatically assert that "freedom" of utter-

ance is not guaranteed, in the same sense in which we have spoken of freedom to breathe.

The ordinary and plain meaning of the word "freedom" should readily have solved all problems, if there ever really were any such, which were discoverable by reason, uninfluenced by hysterical emotions. In common parlance, we all understand that a man is legally free to do an act whenever he may perform that act with impunity, so far as the law is concerned. Thus no one would claim that another was legally free to commit larceny so long as larceny involved liability of subsequent criminal punishment. No one would say that the law leaves a man free to commit murder so long as there is a law punishing murder. Likewise no man, who is depending purely upon the phraseology of the constitution, will ever say that the laws leave speech and press free, so long as there is any law which prescribes a penalty for the mere utterance of any one's sentiments, merely as such utterance and independent of any actually accomplished injury to another.

*The Abuse of Freedom.*—On the other hand, it would seem equally certain, to the ordinary understanding, that there exists no legal abridgement of a man's freedom to speak or write, if he were punishable for the abuse of that freedom, provided we only mean by "abuse" an actual and not a mere constructive abuse: that is, provided he is punished only for an actual, and not a constructive injury, resulting from his utterance. Manifestly in such a case he is not punished for the speech as such, but he is punished for an actual ascertained resultant injury, to some one not an undeceived voluntary adult participant in the act.

His utterance in that case may be evidence of his complicity in, or contribution to that actual injury, and punishment for an actual resultant injury is not in the least an abridgement of the right to speak with impunity, since manifestly it is not a punishment for mere speaking as such, the essence of criminality—the criteria of guilt

—being something other than the utterance of his sentiments. Manifestly in this view which is but the natural import of the words "freedom of speech and of press," the expression can only mean that every man under the law shall have the equal right and opportunity of every other man to utter any sentiment that he may please to utter, and do so with impunity, so long as the mere utterance of his sentiments is the only factor in the case. It does not exempt him from punishment for murder, arson or other actual and resultant injury, but leaves it where he may be punished for his contribution toward and participation in bringing about these injuries. His utterances may be evidence tending to show his responsibility for the actual injury which is penalized, but the penalty attaches on account of that injury, and can never constitutionally be predicated merely upon the sentiments uttered, without, to that extent, abridging our freedom to utter. When the statute does this the constitutional right is violated, notwithstanding the courts quite uniformly hold otherwise.

Both the words "speech" and "press," as used in our constitutions, are limitations upon the word "freedom" as therein used. The purpose of this clause is to preclude the legislative abridgement, not of all liberty, but of liberty only in relation to two subjects, to-wit: "speech" and "press." It is manifest therefore that the same word "freedom" cannot change its meaning according to whether the utterance is oral or printed. In other words "freedom" must mean the same thing whether it relates to "speech" or "press." In the very nature of things "freedom of speech" can not mean mere absence of a censor to whom an idea must be submitted before utterance, because the very act of submitting the idea to a censor, implies its utterance. Furthermore, there never was a time when a censor assumed to pass upon oral speech, prior to its utterance. Unpopular oral speeches were only punished after utterance. The whole controversy over "freedom of speech" was a demand that speakers might

be free from such subsequent punishment for those of their utterances which in fact had not actually injured anyone, and it was that controversy which the framers of our constitutions intended to decide for all time, by guaranteeing to all the equal right and opportunity so far as the law is concerned, to speak one's sentiments upon any subject whatever, and with absolute impunity so long as no one was actually injured except by his voluntary and undeceived consent, as when the person is convinced to the changing of his opinion about some abstract doctrine of morals or theology, the acceptance of which his neighbors might deem a deterioration, and the new convert esteems it as a moral and intellectual advance. If as I believe this is the inevitable interpretation of "freedom" in relation to "speech" and the meaning of "freedom" in relation to "press" must be the same, then we are irresistibly forced to the conclusion that our courts have been wrong in asserting that "freedom" in relation to the press means only the absence of a censorship prior to publication, without enlarging those intellectual liberties which are beyond the reach of legislative abridgement.

When we come to make a historical study of the meaning of "freedom of the press" we will at once discover that the personal elements disappear, to be replaced by humanistic considerations. Now it is not merely a question of imprisonment or fines, but a question of intellectual opportunity,—not only a question of the opportunity to speak, but of the more important opportunity of the whole public to hear and to read what ever they may choose, when all are free to offer. Now it ceases to be a matter of the personal liberty of the speaker or writer, and must be viewed as a matter of racial intellectual development, by keeping open all the avenues for the greatest possible interchange of ideas. In this aspect the most important feature of the whole controversy simmers down to this proposition, namely: that every idea, no matter how unpopular shall, so far as the law is concerned, have the same oppor-

tunity as every other idea no matter how popular, to secure the public favor. Of course only those ideas which were unpopular with the ruling classes were ever suppressed. The essence of the demand for free speech was that this discrimination should cease. In other words, every inequality of intellectual opportunity, due to legislative enactment, was and is an unwarranted abridgement of our natural liberty, when not required by the necessity for the preservation of another's equal right to be protected against actual material injury.

The personal and psychologic cause of this judicial destruction of constitutional right is to be discovered in our defective human nature, which almost unavoidably develops in judges, by reason of the very character of the function which they habitually perform, a growing lust for power, so strong that very, very few ever acquire sufficiently critical intellects to check it, so that they can officially acknowledge the right of an ordinary citizen at the bar of justice to damage the judge's vanity, or stimulate his emotions of aversion. Thus our judges, (especially through contempt proceedings and vague penal statutes, made certain by judicial legislation) have unconsciously demanded and secured for themselves the adulation usually given only to an inerrant pope or king, and have almost reduced the judicial bench to a sacrificial altar, the members of the bar to a kind of lesser priesthood, whose duty it is at least by silent acquiescence, to keep the laity in ignorance of judicial incompetence and iniquity, and in an attitude of suppliant humility. From the usurpation of the power to punish for a mere constructive contempt founded only on the damaged vanity or emotions of the judge, the doctrine has come to be widely accepted that every idea which offends the moral sentimentalism of a multitude may be legislatively suppressed, without breaching the constitutional guarantee of freedom of speech and of the press.

Shall this condition be accentuated and become definitely fixed by a continuing

affirmance of the judicial destruction of our freedom of speech and of the press? Will the process of judicially amending our constitutions by the interpolation of limitations upon freedom of press stop, or shall we have an ever increasing abridgement of such liberty? These are the serious questions which confront us.

THEODORE SCHROEDER.

New York, N. Y.

#### MONOPOLIES—COMBINATIONS OF TRADES AND PROFESSIONS.

ROHLF v. KASEMEIER.

Supreme Court of Iowa, November 18, 1908.

It is no crime for any number of persons without any unlawful object in view to associate themselves together, and agree that they will not work for or deal with certain classes of men, or work under a certain price or without certain conditions, and a union of laborers or professional men for the purpose of advancing wages is not unlawful.

DEEMER, J.: Plaintiff, who is a physician and surgeon, with 13 others of like profession, were indicted by the grand jury of Bremer county for the crime of entering into an agreement, combination, or understanding to fix and maintain fees and charges to be exacted for medical and surgical services in said county. Plaintiff was arrested under the indictment, and thereafter brought habeas corpus proceedings before the Honorable C. H. Kelley, Judge, to secure his release from custody, claiming that he was unduly and illegally restrained of his liberty, for the reason that the indictment charges no offense known to our laws, and that, if there be a law forbidding such acts as are charged against him, it is unconstitutional and void, in that it deprives him of his liberty, prevents him from acquiring or possessing property, and deprives him of his safety and the pursuit of his happiness, and deprives him of the right of contract and of the equal protection of the laws. The charging part of the indictment reads as follows: "The said L. C. Kern, Dr. C. T. Brown, Dr. O. L. Chaffee, Dr. W. A. Rohlf, Dr. H. C. Jungblut, Dr. B. C. Dunkelberg, Dr. C. H. Graening, Dr. Stafford, Dr. A. G. Rennison, Dr. Patterson, Dr. J. F. Auner, Dr. Murphy, Dr. Bradford, Dr. Cross, on the 30th day of July, in the year of our Lord one thousand nine hundred and seven in the county aforesaid, being physicians and surgeons located and practicing their profes-

sions in the county of Bremer, state of Iowa, did then and there willfully, unlawfully, and maliciously conspire, combine, confederate, and agree with each other to create, organize, and enter into, and did then and there willfully, unlawfully, and maliciously enter into and become, a member of and a party to a trust, pool, agreement, contract, combination, confederation, and understanding to fix, establish, and regulate and maintain the price of a commodity in the county of Bremer, state of Iowa, and did then and there willfully and unlawfully fix, regulate, and establish the price of medical service and medical skill, and the profit, benefit, fee, and compensation to be received therefor contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Iowa." The demurrer challenges these contentions of plaintiff, and it is stoutly insisted upon this appeal that the indictment does charge an offense, and that the statute under which it was found is a valid exercise of legislative power.

As the case must turn upon the construction of a statute, we here copy the material parts of the section under which the indictment was found. It is No. 5060 of the Code, reading as follows: "Pools and Trusts. Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association or individual, creating, entering into or becoming a member of, or party to any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation, partnership, association, or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced or sold in this state, shall be guilty of conspiracy." The first point to be decided is: Do the acts charged constitute a crime under this section of the Code? It will be noticed that it forbids a combination, agreement, or understanding to regulate or fix the price of any article of merchandise, or commodity, or of merchandise to be manufactured, mined, produced, or sold in this state. The primary inquiry is: Are the charges of a physician or surgeon for his medical skill or ability an article of merchandise or commodity to be produced or sold in this state. For appellant it is contended that the word "commodity" is broad enough to cover the charge made for professional services or skill, and that the trial court was in error in holding to the contrary. It must be remembered that the word is found in a criminal statute, and that in the interpretation of such statutes different rules apply

from those which obtain in civil matters, or where contracts are involved. Nothing is to be added to such statutes by intendment, and, as a rule, they are to have a strict construction. Moreover, it is well settled that, in construing any statute, all the language shall be considered, and such interpretation placed upon any word appearing therein as was within the manifest intent of the body which enacted the law. Much of necessity depends upon the context and upon the usual and ordinary significance of the language used. Now, the word "commodity" is derived from the Latin "Commodetas," and means primarily a convenience, profit, benefit, or advantage; but in referring to commerce it comprehends everything moveable—that is, bought or sold—except animals. See Webster's International Dictionary; *Best v. Bauder*, 29 How. Prac. (N. Y.) 489; *Barnett v. Powell*, 16 Ky. 409; *Queen Ins. Co. v. State*, 86 Tex. 250, 24 S. W. 397, 22 L. R. A. 483. This word appearing in another statute (McClain's Code, sec. 5454) was held to cover insurance, and it was decided that a combination to fix insurance rates was illegal. See *Beechley v. Mulville*, 102 Iowa, 602, 70 N. W. 107, 71 N. W. 428, 63 Am. St. Rep. 479. But in that case the parties were not selling their own services. They were, as the opinion says, selling insurance, which was regarded as a commodity as used in the statute then under consideration. Here the indicted defendants were for a price giving their own services, or perhaps selling them, and the question is: Were these personal services a commodity?

As already indicated, the word must be taken in connection with the others used in the statute, and it is manifest that the commodity referred to must have been such as could be manufactured, mined, produced, or sold in the state, and the price was to be of an article or merchandise or commodity. If the contention of appellant be correct, the statute covers all kinds of personal labor, both skilled and unskilled, under the term "commodity." Indeed, this is the broad claim made by counsel. Now, whilst there is a class of political economists who treat labor as so much merchandise, the wage being regulated simply by supply and demand, there is another class, which, taking account of the personal equation, sees in it something more than a commodity, and refuses to subscribe to the doctrine that supply and demand alone regulate the price. This latter class of economists refuses to accept the doctrine that a man is rich because he has stored away within him many days' work, and are convinced that his necessities, quite as often as the demand for his labor, fixes the stipend which he is to receive. In other words, the laborer, skilled or unskilled, is not regarded as standing on an equality with him who

barter in goods and merchandise. It is not, of course, within the province of courts of justice to adopt or promulgate any particular system of political science; but in the interpretation of statutes they must take notice of current political theory and conviction. If we were to adopt the view so strongly presented by appellant's counsel, it would be on the assumption that the associated words "merchandise" and "commodity" include the wages to be paid for labor, because labor is a sort of merchandise, subject to barter and sale as other goods. A fundamental rule of construction is that, where particular words are followed by general ones, the general are restricted in meaning to objects of a like kind with those specified. *State v. Stoller*, 38 Iowa, 321; *People v. Railroad*, 84 N. Y. 565; *McDade v. People*, 29 Mich. 50. Now, the term "merchandise" is special rather than general, and has reference primarily to those things which merchants sell either at wholesale or retail. *Jewell v. Board*, 113 Iowa, 47, 84 N. W. 973. "Commodity" is a broader term, and, when used as in the statute now under consideration, means almost any description of article called moveable or personal estate. *Barnett v. Powell*, 16 Ky. 409; *Shuttleworth v. State*, 35 Ala. 415; *State v. Henke*, 19 Mo. 225.

Used in connection with the term "merchandise," and qualified as it is in the latter part of the section by the words "manufactured, mined, produced, or sold," it is manifest that the statute was not intended to, and did not, include labor either skilled or unskilled. It must be remembered that the statute is a criminal one, and that such statutes must be strictly construed; and, in case of doubt, the construction must be adopted most favorable to the party charged. The only ground upon which appellant can stand with any show of plausibility is that labor is a commodity to be bought, sold, or produced, as merchandise. This is a strained and unnatural construction, and gives to the word "commodity" a meaning which is perhaps permissible, but is not the commonly accepted one. Under our statutes, words and phrases are to be construed according to the context and the approved usage of the language. Code, sec. 48. With this in mind, we are constrained to hold that labor is not a commodity within the meaning of the act now in question. As supporting this conclusion, see *Hunt v. Riverside Club*, 140 Mich. 538, 104 N. W. 40, 12 Detroit Leg. N. 264; *Queen v. State*, 86 Tex. 250, 24 S. W. 397, 22 L. R. A. 483. It seems to be the almost universal holding that it is no crime for any number of persons without an unlawful object in view to associate themselves together, and agree that they will not work for or deal with certain classes of men, or work

under a certain price or without certain conditions. *Carew v. Rutherford*, 106 Mass. 14, 8 Am. Rep. 287; *Commonwealth v. Hunt*, 4 Mete. 134, 33 Am. Dec. 346; *Rogers v. Everts*, 17 N. Y. Supp. 268; *United States v. Moore* (C. C.) 129 Fed. 630.

The statute in question was aimed at unlawful conspiracies or combinations in restraint of trade, and was manifestly not intended to cover labor unions. It is the right of miners, artisans, laborers, or professional men to unite for their own improvement or advancement or for any other lawful purpose, and it has never been held, so far as we are able to discover, that a union for the purpose of advancing wages is unlawful under any statutes which have been called to our attention. As said by Judge Taft in *Phelans Case* (C. C.) 62 Fed. 803: "Such unions, when rightly conducted, are beneficial in character." And it would be a strained and unnatural conclusion to hold that a statute aimed at pools and trusts should be held to include agreements as to prices for labor because the word "commodity" is used therein. As the right to combine for the purpose of securing higher wages is recognized as lawful at common law, a statute enacted to prohibit pools and trusts should not be held to apply to combinations to fix the wages for labor, unless it clearly appears that such was the legislative intent. Whatever of doubt there may be regarding the power of the legislature to do so, we do not think that the act in question covers combinations to fix the labor price whether that labor be skilled or unskilled.

Appellants rely largely upon the celebrated cases of *Loewe v. Lawlor et al.*, 208 U. S. 274, 52 L. Ed. 488, 28 Sup. Ct. 301, and *In re Debs*, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. Ed. 1092, and other like cases in support of their construction of the statute; but in our opinion none of these cases are applicable. The *Debs Case* is not in point. Others involved a pool between manufacturers and still other boycotts. In the *Loewe case* defendants were engaged in a boycott of plaintiff and its customers, and were in the performance of acts calculated to destroy plaintiff's business by driving away customers, by threats and coercion were driving away plaintiff's employees, and circulating false reports regarding plaintiff and its business, the effect of which was to destroy its interstate trade. These acts were held to be an unlawful interference with interstate commerce, and a violation of the anti-trust law known as the "Sherman Act" (Act July 2, 1890, c. 647, 26 Stat. 209 [U. S. Comp. St. 1901, p. 3200]). The statute before us has nothing to do with commerce; nor does it have to do with restraint of trade or commerce as does the Sherman act. It has to do

with pools and trusts organized in this state to fix or regulate the price of any article or commodity, or to fix or limit the amount or quality of any article, commodity or merchandise to be produced or sold in the state. Surely it has no reference to the amount or quality of labor to be produced or sold. Such a construction would be ridiculous. And, if it will not bear that interpretation, it follows that the word "commodity," when used with reference to prices, should not be held to include labor. No case has been cited which supports appellant's contention, and we have not been able to find any. On the other hand, the following lend support to our conclusions: *Cleland v. Anderson*, 66 Neb. 252, 92 N. W. 307, 5 L. R. A. (N. S.) 136; *Downing v. Lewis*, 56 Neb. 386, 76 N. W. 900; *State v. Associated Press*, 159 Mo. 410, 60 S. W. 91, 51 L. R. A. 151, 81 Am. St. Rep. 368. It would be stretching the statute entirely too far to hold that it covers combinations to fix the price of labor. That the practice of medicine and surgery is labor, no one, we think, will question.

The trial court was right in discharging the plaintiff, and its judgment must be, and it is, affirmed.

**NOTE—Combinations to Fix Wages and Fees—Restraint of Trade.**—The principal case presents the narrow question whether a particular criminal statute embraced under the terms, "commodity," and "merchandise," as there used a combination to fix prices for labor or services and it was rightly held that they did not. Therefore, the prosecution rightly failed. It may be said that the anti-monopoly statute considered is of about the same general character as that found in the legislation of other states. It may be further said that, the federal anti-trust statute, that is the Sherman act, does not regard the question of combination in any way as distinguishing between capital and labor, or as between commodities and wages, but it simply views all arrangements in pursuance of concerted action as to their influence upon the free flow of commerce between the states, or restricts, in that regard, the liberty of a trader to engage in business. See *Danbury Hat Case sub nom. Loewe v. Lawlor*, 208 U. S. 274, 52 L. Ed. 588, 28 Sup. Ct. 301. Therefore whether any combination may or may not be in restraint of trade from a common law or other view is of no concern to federal law, as the only policy the federal government takes into view is that in respect to interstate commerce, a view distinctly recognizing the rightful autonomy of our federated sovereignties.

But there is a large inquiry remaining as to how far society, union, federation arrangements may extend in the yielding up of an individual's right and liberty of contract infringes upon public policy, or is void as in restraint of trade. Decision touching this inquiry is more or less abundant so far as labor unions are concerned, because their members have sought more than those of other crafts and avocations to obtain what they deemed the advancement of their interests in a surrender of their free right of contract, deem-

ing also that such voluntary surrender promised greater freedom from coercion from within than compulsion from without. The court of appeals of New York has stated the general proposition of the right of labor "to combine and to co-operate for the promotion of such ends as the increase of wages, the curtailment of the hours of labor, the regulation of their relations with employers or for the redress of a grievance," if that "does not extend so far as to inflict injury upon others or to oppress and crush them by excluding them from all employment, unless gained through joining labor organization or trades union." *Jacobs v. Cohen*, 183 N. Y. 207, 76 N. E. 5, 2 L. R. A. (N. S.) 802, 57 Am. St. Rep. 491. The qualification of such general proposition is an admission that there is a public policy involved, and it would seem that the limit of such qualification is quite shadowy. In the *Jacobs* case there was a minority view contending the question there was foreclosed by prior decision, in fact the majority opinion merely held that a contract with a particular union was not void upon the theory that it was not in general restraint of trade, while the minority regarded it as a class of contract in a scheme of general restraint. The contract certainly arose out of a general concert and independently of there being a contract between employer and employee there were promises to a third party, a labor union, imposing restrictions otherwise non-existent, even though it may be said the entering into agreement with the third party was a condition to contracting imposed by the employee. The minority reasons, however, that both employer and employee were not persuaded but coerced, the former because labor was not otherwise attainable and the latter because it was thus as to employment. It seems to us that, if the fact was as the minority states and evidence could demonstrate it to be general, its position is correct, but there is nothing to be deduced from the making of a particular contract of illegality, but it must be shown by proof to arise out of a general scheme, the means for carrying out the scheme being unlawful because part of an unlawful plan. It was upon the unlawful plan theory that the *Danbury Hat Case* was decided, the opinion quoting Justice Holmes in *Aikens v. Wisconsin*, 195 U. S. 194, 205, who said: "The statute (Sherman law) is directed against a series of acts and acts of several, the acts combining with intent to do other acts. The very plot is an act in itself!"

One of the leading cases specifically passing upon the validity of an association's regulation to control prices for work done by its members is that of *More v. Bennett*, 140 Ill. 67, 23 N. E. 886, 33 Am. St. Rep. 216, 15 L. R. A. 351. The facts showed an association of stenographers of which one, if not the leading, object was to control rates to be charged for stenographic work and thus prevent competition between the members.

Suit was brought by a firm of stenographers against other stenographers alleging that by reason of defendants violating said rule, they were compelled to reduce their compensation as to certain work they had contracted to do. The association fixed the schedule of rates and members agreed to abide thereby.

The court said: "The rule of public policy here involved is closely analogous to that which de-

clares illegal and void contracts in general restraint of trade, if it is not indeed a subordinate application of the same rule."

The Illinois court, furnishes an additional reason than suggested by us for the minority in the *Jacobs* case being right. Thus in the Illinois case it was said: "Counsel seek to distinguish this case from those cited by the circumstance, alleged in the second count of the declaration, that but a small portion of the law stenographers of Chicago, belong to said association. An analogy is thereby sought to be raised between the contract in this case and those contracts in partial restraint of trade, which the law upholds. We think the analogy does not exist. Contracts in partial restraint of trade which the law sustains, are those which are entered into by a vendor of a business and its good will, by which the vendor agrees not to engage in the same business in a limited territory, and the restraint to be valid must be no more extensive than is reasonably necessary for the protection of the vendee in the enjoyment of the business he has purchased. But in the present case there is no purchase or sale of any business, nor any other analogous circumstance, giving to one party a first right to be protected from competition against another," and "we can see no legal difference between the restraint upon competition which the association now exercises and that which it will exercise when it is in a position to dictate terms to all who are engaged in the business and to all who may wish to obtain the services of law stenographic reporters."

As to all professions, the following of which the state has a right to regulate under its police power and as guarding the public health we think there are additional reasons why restraint upon the utmost freedom in the treatment of patients is contrary to public policy. If the state can in the interest of public health authorize only certain persons to practice medicine or dentistry, then a license to practice is somewhat likened to a commission to a public official. The state impliedly tells its licensee, that he is not allowed to surrender his freedom to exercise the privilege of his license, because its exercise is for the public good. Of his individual will he may impose terms on the pursuit of his calling, but not give up his liberty, or constrain his will, especially when by so doing he also thwarts the purpose of the state in commissioning his confederate.

But whether this be so or not it has been held, that a combination to uphold prices of labor or services is as much in restraint of trade as a trust to dictate the price of merchandise. That the service is professional ought to intensify, instead of mitigate the principle involved.

N. C. COLLIER.

## HUMOR OF THE LAW.

Michael Joseph Barry, the poet, was appointed police magistrate in Dublin. An Irish-American was brought before him charged with suspicious conduct, and the constable swore, among other things, that he was wearing a "Republican hat." "Does your honor know what that means?" inquired the prisoner's lawyer, "I presume," said Barry, "that it means a hat without a crown."

## WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of  
ALL the State and Territorial Courts of Last  
Resort and of all the Federal Courts.

Arkansas	53
California	53, 123
Colorado	9, 32, 44
Georgia	10, 12, 26, 37, 46, 48, 80, 86, 93
Iowa	6, 16, 40, 50, 79, 102, 109
Kansas	19, 29, 41, 42, 49, 64, 82, 96, 99, 103
Kentucky	3, 13, 22, 39, 55, 70, 73, 89, 90, 100, 111, 122
Michigan	66, 115
Missouri	47, 56, 75
Nebraska	72, 78
New Mexico	72, 78
New York	2, 14, 15, 21, 28, 35, 36, 43, 59, 63, 77, 81, 82, 92, 93, 97, 107, 113, 117, 121, 125
North Carolina	1, 4, 8, 23, 25, 30, 45, 50, 52, 65, 68, 71, 88, 95, 104, 105, 112, 114, 118, 119
Oregon	54, 62, 101, 106, 110, 124
South Carolina	50, 67, 87
Tennessee	74
Texas	5, 17, 18, 20, 24, 27, 31, 34, 38, 61, 69, 91, 108, 116, 120
Utah	84
Virginia	85
Wisconsin	11, 33, 57, 76, 94

1. **Accident Insurance**—Proofs of Loss.—Where plaintiff submitted proofs of loss on an accident policy which on their face showed that the insurer was not liable, the burden was on plaintiff to show that the proofs were erroneous in fact.—*Hill v. Aetna Life Ins. Co.*, N. C., 63 S. E. 124.

2. **Accord and Satisfaction**—What Constitutes.—A payment of a less sum on an unliquidated claim than demanded in full satisfaction is an accord and satisfaction.—*Freeman v. Tiffany Studios*, 113 N. Y. Supp. 64.

3. **Action**—Contract or Tort.—One voluntarily waiving the tort, and suing on the implied promise to pay for wrongfully cutting and removing timber on his land, makes the action one of assumption.—*Asher v. Cornett*, Ky., 113 S. W. 131.

4. **Adverse Possession**—Color of Title.—The report of commissioners in partition, found among an allottee's papers and restored to the records on proof of its genuineness was properly admitted to show color of title to land sued for; all public records of the partition proceeding having been destroyed.—*Hill v. Lane*, N. C., 62 S. E. 1074.

5. **Possession of Tenant**—Possession of land by a party after suspension of limitations by the Civil War held immaterial, where he had held for a sufficient time to prescribe the owner's title before such suspension.—*Harris v. Iglehart*, Tex., 113 S. W. 170.

6. **Railroad Right of Way**—Owners of lots abutting upon a railroad right of way have no title by adverse possession to strips of the right of way occupied as part of their lots and under no other claim of right.—*Chicago, M. & St. P. Ry. Co. v. Hanken*, Iowa, 118 N. W. 527.

7. **Animals**—Marks and Brands.—Where a brand is recorded with the cattle sanitary board, all animals branded therewith are prima facie the property of the person owning such brand.—*Territory v. Caldwell*, N. M., 98 Pac. 167.

8. **Running at Large**—The legislature may re-enact the common-law rule as to the restraint of domestic animals, and may render such re-enactment applicable to the whole or any political division of the state.—*State v. Mathis*, N. C., 63 S. E. 99.

9. **Appeal and Error**—Amendments.—A defendant permitted to testify without objection to a matter set up in a proposed amended answer is not prejudiced by the refusal to permit the amendment.—*Richner v. Plateau Live Stock Co.*, Colo., 98 Pac. 178.

10. **Constitutionality of Statute**—The question whether a statute is constitutional will not be certified to the supreme court, where a determination can be reached without deciding its constitutionality.—*Wimberly v. Georgia, Southern & F. Ry. Co.*, Ga., 63 S. E. 29.

11. **Harmless Error**—A mistake in inserting the word "not" in an instruction held to be more favorable to appellant than if the word had been omitted, and not to be ground for reversal.—*Hiroux v. Baum*, Wis., 118 N. W. 533.

12. **Refusal of Certiorari**—The court of appeals cannot review the refusal of a writ of certiorari unless the petition for certiorari is incorporated in the bill of exceptions or otherwise verified as a part thereof.—*Gossett v. City of Atlanta*, Ga., 63 S. E. 143.

13. **Arbitration and Award**—Merger of Action.—Upon the submission of the contract, rights of the parties to arbitrators and a valid award being by them, the controversy was merged in the award.—*Spless' Adm'x v. Bartley*, Ky., 113 S. W. 127.

14. **Associations**—Employers' Associations.—A member of a trade association held entitled to restrain the negotiation of notes given to secure obedience to the association's regulations, where the resolution for the disobedience of which the notes were forfeited was unlawful.—*Sackett & Wilhelms Lithographing & Printing Co. v. National Ass'n of Employing Lithographers*, 113 N. Y. Supp. 110.

15. **Bankruptcy**—Profits of Business.—Profits made from a business held not to belong to the concern or its trustee in bankruptcy, but to unsecured creditors.—*Gill v. Bell's Knitting Mills*, 113 N. Y. Supp. 90.

16. **Banks and Banking**—Action for Deposits.—In an action against a bank on an alleged lost certificate of deposit, where the bank's employees, testifying from their books, denied that a deposit was made, the bank could introduce, in connection with the other testimony, its records and methods of business, as tending to corroborate their testimony, and to show affirmatively that no deposit was made.—*Wagner v. Valley Nat. Bank*, Iowa, 118 N. W. 523.

17. **Beneficial Associations**—Expulsion of Member.—That a member of a railroad brotherhood testified against a railroad company and his brother members held not ground for his expulsion.—*St. Louis & S. W. Ry. Co. of Texas v. Thompson*, Tex., 113 S. W. 144.

18. **Benefit Societies**—Wrongful Termination of Certificate.—Insured, on the alleged wrongful termination of his policy, may tender premiums, and on maturity sue for benefits. He may sue for damages for the wrongful cancellation of the policy, or sue in equity to determine whether the policy is still in force.—*Royal Fraternal Union v. Lundy*, Tex., 113 S. W. 185.

19. **Bills and Notes**—Negotiability.—The negotiable character of a note made in Kansas and payable in another state will be determined by the law of the latter state.—*Sykes v. Citizens' Nat. Bank of Des Moines*, Iowa, Kan., 98 Pac. 206.

20. **Brokers**—Commissions.—A broker, employed to sell land for one-half cash and balance

on credit, held not entitled to recover a commission on the owner refusing to consummate a sale for all cash.—*Taylor v. Read, Tex.*, 113 S. W. 191.

21. **Canals**—Remedy of Riparian Owner.—The remedy of a riparian owner whose rights were impaired by the construction of a state canal held to be against the state alone through the Court of Claims, and the contractor not to be liable.—*Meneely v. Kinser Const. Co.*, 113 N. Y. Supp. 183.

22. **Carriers**—Carriage of Live Stock.—A carrier of live stock becomes an insurer of its safe delivery, except where injury or loss results from the act of God or the public enemy, or from the inherent nature, propensities, or viciousness of the animals.—*Louisville & N. R. Co. v. Pedigo, Ky.*, 113 S. W. 116.

23.—Delay in Shipment.—Damages because plant was idle held not recoverable on delay in a shipment of iron, where there was nothing to indicate the use to which the iron was to be put, or of any special damage.—*Asheboro Wheelbarrow & Mfg. Co. v. Southern Ry. Co.*, N. C., 62 S. E. 1091.

24.—Liability for Injury to Passenger.—A passenger, riding on a freight train by contract with the brakeman in violation of the company's rules, held precluded from recovering for injuries sustained in alighting while the train was in motion.—*Goodney v. International & G. N. R. Co.*, Tex., 113 S. W. 171.

25.—Refusal to Receive Freight.—That the point to which freight was to be consigned was not a regular station at which an agent of the carrier was kept was no valid excuse for the carrier's refusal to receive the freight for transportation.—*Reid & Beam v. Southern Ry. Co.*, N. C., 63 S. E. 112.

26. **Certiorari**—Authority of Agent to Execute Bond.—A certiorari bond may be executed by an agent, and it will be presumed that he was duly authorized, unless it affirmatively appears that the agency was created by an undisclosed power of attorney.—*Bass v. Masters & Agee, Ga.*, 63 S. E. 24.

27. **Chattel Mortgages**—Taking of Second Mortgage.—The taking of a second mortgage to secure the same debt secured by a first mortgage on the same property does not operate as a satisfaction and release in law of the first mortgage.—*Adams-Burks-Simmons Co. v. Johnson, Tex.*, 113 S. W. 176.

28. **Clubs**—Board of Governors.—The restrictions on the powers of the governors of a membership corporation must be strictly construed, since the statute imposes upon each director a liability for the debts of a corporation.—*Fischer v. Motor Boat Club of America*, 113 N. Y. Supp. 56.

29. **Common Law**—Law of Other State.—The common law of another state governing commercial transactions is to be determined upon pleadings and proof.—*Sykes v. Citizens' Nat. Bank of Des Moines, Iowa, Kan.*, 98 Pac. 206.

30. **Constitutional Law**—Restraining Animals From Running at Large.—The legislature, in re-enacting the common law in respect to the restrain of domestic animals, may delegate to the counties and townships of the state the power to declare that the law shall operate in their respective divisions, and to fix the boundaries of the stock law district thus established.—*State v. Mathis, N. C.*, 63 S. E. 99.

31.—Vested Rights.—A statute, depriving

a party to a pending suit of an objection to the admission of evidence available under former laws, is not deprived of any right in property vested before the enactment of the statute.—*Haney v. Gartin, Tex.*, 113 S. W. 166.

32. **Contracts**—Acceptance of Work.—Under a building contract, the acceptance by the owner's overseer of work as the construction progresses is not conclusive upon the owner, unless plainly so specified in the contract.—*Town of Sterling v. Hurd, Colo.*, 98 Pac. 174.

33.—Substantial Performance.—Where a building contract has been substantially performed, the owner held liable for the contract price, subject to deductions for incompleteness, irrespective of whether the building as completed is of as great or even greater value than the one called for.—*Poeller v. Heintz, Wis.*, 118 N. W. 543.

34. **Corporations**—Action Against Foreign Corporations.—A Texas court of equity has jurisdiction of a suit against a foreign corporation, domiciled in another state, to determine whether an insurance policy is in force or has been legally forfeited.—*Royal Fraternal Union v. Lundy, Tex.*, 113 S. W. 185.

35.—Eligibility of Directors.—Stockholders held estopped to question the eligibility of directors for the purpose of defeating a petition for dissolution of the corporation.—*In re Manoca Temple Ass'n*, 113 N. Y. Supp. 172.

36.—Ratification of Contract.—Where one does work or furnishes material to a corporation to the knowledge of its officers, the corporation, unless it promptly dissents, will be held to have ratified the contract and be liable thereunder.—*Fischer v. Motor Boat Club of America*, 113 N. Y. Supp. 56.

37. **Courts**—Equity Jurisdiction.—The city court is without jurisdiction in equity, and in a suit on a note, where defendants claim damages for a tort not connected with the note, the plea is properly stricken.—*Geer v. Cowart, Ga.*, 62 S. E. 1054.

38.—Extra Territorial Jurisdiction.—A Texas court of equity cannot render a decree restraining non-resident officers of a foreign insurance company from canceling the certificate of a resident of Texas.—*Royal Fraternal Union v. Lundy, Tex.*, 113 S. W. 185.

39. **Covenants**—Breach of Warranty.—If purchasers are required to pay an additional street assessment on a reapportionment after their purchase and after payment of the purchase price, they have recourse against their vendor on her warranty.—*Comley v. American Standard Asphalt Co., Ky.*, 113 S. W. 125.

40.—Defenses.—A covenant restricting the grantee's right to fence held not unreasonable or contrary to public policy.—*Beck v. Heckman, Iowa*, 118 N. W. 610.

41. **Criminal Law**—Validity of Sentence.—The sentence of a police judge that a defendant pay a fine and be imprisoned in the city jail is not void by an addition that defendant shall go on his own recognizance until commitment is issued.—*In re Murphy, Kan.*, 98 Pac. 214.

42.—Withdrawal of Plea.—A defendant having voluntarily pleaded guilty, the court did not abuse its discretion in refusing to allow the plea to be withdrawn.—*State v. Garrett, Kan.*, 98 Pac. 219.

43. **Damages**—Breach of Contract.—Where a contractor sues for breach of the contract, the measure of damages held the difference be-

tween the price agreed to be paid, and what it would cost to complete it.—*Goldstein v. Godfrey Co.*, 113 N. Y. Supp. 123.

44.—**Breach of Contract to Deliver Hay.**—A seller of hay failing to deliver held liable to the buyer for loss resulting, including loss of cattle from starvation and shrinkage for want of hay.—*Richner v. Plateau Live Stock Co.*, Colo., 98 Pac. 178.

45.—**Damnun Absque Injuria.**—The doing of a lawful act in a lawful manner affords no cause of action to one damaged thereby, though the doing of the act complained of is prompted by a motive which is reprehensible and malicious.—*White v. Kincaid*, N. C., 63 S. E. 109.

46.—**General or Special.**—Though a plaintiff may make out a case showing a right to general damages, yet if he has sued for special damages only, and they are not recoverable, a verdict in his favor is unauthorized.—*Red Cypress Lumber Co. v. Beall*, Ga., 62 S. E. 1056.

47.—**Loss of Earnings.**—Plaintiff held entitled to recover for loss of earnings after his employment in which he was engaged when injured was terminated up to the time of the trial under an averment that he had or would lose them.—*Smith v. St. Louis Transit Co.*, Mo., 113 S. W. 216.

48.—**Divorce.**—Alimony.—Notwithstanding the wife may have barred herself by a settlement from permanent alimony, such settlement held not to bar an allowance to the children.—*Johnson v. Johnson*, Ga., 62 S. E. 1044.

49.—**Conveyance to Defeat Alimony.**—If plaintiff was defrauded in the assignment of alimony because her husband had transferred property before the divorce, her remedy was to set aside the judgment awarding the divorce and alimony, and not to sue his grantee to set aside the conveyance.—*Kessinger v. Shrader*, Kan., 98 Pac. 236.

50.—**Pleadings.**—In a divorce action for adultery, the statute does not require that plaintiff's knowledge of the defendant's adultery for six months before bringing suit should be alleged in the complaint, but only in the verification thereof.—*Kinney v. Kinney*, N. C., 63 S. E. 97.

51.—**Easement—Restrictive Covenants.**—Where a grantor retained a restriction of the grantee's right to fence, the right was enforceable by injunction, whether or not it had any substantial money value.—*Beck v. Heckman*, Iowa, 118 N. W. 510.

52.—**Ejectment—Burden of Proof.**—The burden is on a defendant, in an action for land claiming for improvements, to show that they were made in good faith when he believed and had good reason to believe that he owned the land.—*Faison v. Kelly*, N. C., 62 S. E. 1086.

53.—**Title and Right to Possession.**—A lessee never in possession held presumed not to have paid rent, and hence the lessor's successor, substituted as co-plaintiff in an action of ejectment by the lessee, held entitled to recover for the use and occupation.—*Cassin v. Nicholson*, Cal., 98 Pac. 190.

54.—**Elections—Notice.**—The requirement as to notice of a general election is directory, but the requirements as to notice of elections at which some special question is to be submitted are mandatory.—*Guernsey v. McHaley*, Ore., 98 Pac. 158.

55.—**Embezzlement—Indictment.**—Time is not a material element of a charge against an

officer of a corporation for embezzlement of its funds, except that the offense must be committed before indictment found.—*Bailey v. Commonwealth*, Ky., 113 S. W. 140.

56.—**Estates—Legal Title.**—Where the legal title to land was in a trustee, the fact that an owner of the equity of redemption acquired the notes and mortgage held not to effect a merger in him of the equitable and legal estate.—*Curry v. La Fon*, Mo., 113 S. W. 246.

57.—**Evidence—Admission.**—The failure of a debtor to object within a reasonable time to a statement of account delivered to him by the creditor is prima facie an admission that the account is correct.—*Jones v. De Muth*, Wis., 118 N. W. 542.

58.—**Courts.**—Courts take judicial notice of the system of government surveys, and that lands are platted into sections, parts of sections, and fractionals where they abut on bodies of water.—*Little v. Williams*, Ark., 113 S. W. 340.

59.—**Execution—Supplementary Proceedings.**—Where a creditor was only entitled to execution against personal property, a receiver in supplementary proceedings could not be had if only real property is discovered.—*In re Stoddard*, 113 N. Y. Supp. 157.

60.—**Executors and Administrators—Extra Compensation.**—Under Civ. Code 1902, sec. 2561, authorizing administrators to bring an action for extra compensation, and making the verdict of the jury and judgment thereon conclusive, the trial court could pass upon the question of extra compensation where a trial by jury was waived.—*Anderson v. Silcox*, S. C., 63 S. E. 128.

61.—**Yearly Allowance of Widow.**—A widow's right to a yearly allowance, and in lieu of a homestead, is inferior to the claim of a bank on a life policy, delivered to it by decedent to secure a debt.—*Clark v. Southwestern Life Ins. Co.*, Tex., 113 S. W. 335.

62.—**Ferries—Franchises.**—Without a special grant, a corporation could not by its articles acquire a ferry franchise, not covered by a general statute.—*State v. Portland General Electric Co.*, Ore., 98 Pac. 160.

63.—**Fidelity Insurance—Warranties.**—Rule that misrepresentation of material fact will avoid a fidelity bond held not applicable, where the misstatement was made by an officer whose fidelity was insured, and who makes default.—*Stapleton Nat. Bank v. United States Fidelity & Guaranty Co.*, 113 N. Y. Supp. 25.

64.—**Fire Insurance—Waiver of Forfeiture.**—Where an insurer bases its refusal to pay on the failure of insured to comply with a condition of the policy, it cannot, when sued, maintain a defense founded on breach of another condition.—*Farmers' Alliance Ins. Co. v. Ferguson*, Kan., 98 Pac. 231.

65.—**Fraud—Statements Recklessly Made.**—The averment of the existence of a material fact, recklessly or positively, by a party consciously ignorant whether it is true or false, held actionable fraud.—*Whitehurst v. Life Ins. Co. of Virginia*, N. C., 62 S. E. 1067.

66.—**Frauds, Statute of—Debt of Another.**—Where defendant held himself out as a partner, there was no room for the application of the statute of frauds to his liability for a debt contracted by his partner for which the firm was liable.—*P. Hoffmaster Sons Co. v. Hodges*, Mich., 118 N. W. 484.

67.—**Guardian and Ward—Expenditures Exceeding Income.**—The rule as to when the expenditures of a guardian may exceed the income from the estate and the necessity and time of obtaining the court's sanction to such extra expenditures stated.—*Anderson v. Silcox*, S. C., 63 S. E. 128.

68.—**Habeas Corpus—Appeal by State.**—The state cannot appeal from an order in habeas corpus proceedings discharging from imprisonment one convicted of crime.—*Ex parte Williams*, N. C., 63 S. E. 108.

69.—**Homicide—Deadly Weapon.**—One assaulting prosecutrix held guilty of aggravated as-

sault, though the weapon used was a deadly weapon and the assault was made with the intent to kill another.—*Olds v. State, Tex.*, 113 S. W. 272.

70. **Husband and Wife**—Antenuptial Contracts.—An antenuptial contract held to be so inequitable to the wife as to cast on the husband's representatives the burden of proving that she understood, when she executed it, the extent of her prospective husband's estate and the value of her marital rights therein.—*Tilton v. Tilton, Ky.*, 113 S. W. 134.

71.—**Estates by Entirety**.—The severance of timber from land owned by a husband and wife as tenants by entirety does not convert their estate in the timber or the lumber cut therefrom into a tenancy in common.—*Jones v. W. A. Smith & Co., N. C.*, 62 S. E. 1092.

72.—**Failure to Support**.—A wife who is a non-resident, and separated from her husband without fault on her part, may sue her husband in the state for support and maintenance.—*Hoon v. Hoon, Neb.*, 118 N. W. 563.

73. **Indictment and Information**.—Bill of Particulars.—The commonwealth in a criminal case, when required to furnish a bill of particulars, need not state the circumstances with absolute precision, nor specify exact dates, but should not file a bill of particulars so loose as to constitute a dragnet.—*Bailey v. Commonwealth, Ky.*, 113 S. W. 140.

74. **Interest**.—Surety on Bond.—A surety on a bond held chargeable with interest only from the date of the filing by it of a bill to establish its liability.—*United States Fidelity & Guaranty Co. v. Rainey, Tenn.*, 113 S. W. 397.

75. **Intoxicating Liquors**.—Licensed Corporation.—That a corporation cannot be licensed to keep a dramshop does not make it unlawful for a brewing corporation to lease premises so as to have its beer sold in them.—*Conservative Realty Co. v. St. Louis Brewing Ass'n, Mo.*, 113 S. W. 229.

76. **Judgment**.—Default.—A showing of a meritorious defense based on information and belief is insufficient to support an application to open a default judgment.—*Phillips v. Portage Transit Co., Wis.*, 118 N. W. 539.

77.—**Res Judicata**.—Where a tenant in an action to dispossess him alleged on agreement to apply services on the rent, and such issue was decided against him, held, that such was res judicata in a subsequent action for such services.—*Levenson v. Johnson*, 113 N. Y. Supp. 32.

78.—**Validity of Service**.—A court does not obtain jurisdiction by issuing a summons and leaving a copy thereof at defendant's late place of residence, and a judgment rendered on such service is void.—*Minnesota Thresher Mfg. Co. v. L'Heureux, Neb.*, 118 N. W. 565.

79. **Landlord and Tenant**.—Landlord's Lien.—Where the agreement authorizing the sale by a tenant of the property of the leased premises expressly provided that the landlord shall have a lien on the proceeds, such lien is equitable and cannot be enforced as a statutory landlord's lien.—*Kean v. Rogers, Iowa*, 118 N. W. 515.

80.—**Subletting**.—That a landlord directed a subtenant to make needed repairs, and to deduct the cost from the rent, does not show that the landlord elected to treat the subtenant as his tenant.—*Hooks v. Bailey, Ga.*, 62 S. E. 1054.

81.—**Use of Premises**.—Though a tenant was removed by summary proceedings, the right to recover for breach of his covenant to surrender the premises in good condition remained in force.—*Livingston v. Robb*, 113 N. Y. Supp. 137.

82. **Larceny**.—Attempt to Commit.—Where one attempts to steal a stud from another, but only dislodges it so that it falls to the floor, he may be convicted of an attempt to commit larceny, under Gen. St. 1901, sec. 2285.—*State v. Johnson, Kan.*, 98 Pac. 216.

83. **Libel and Slander**.—Pleading.—The objection that special damages are not sufficiently pleaded in a libel action may be taken by demurrer on the ground that the complaint does not state facts sufficient to constitute a cause of action.—*Fagan v. New York Evening Journal Pub. Co.*, 113 N. Y. Supp. 62.

84. **Licenses**.—Validity.—The fact that a stat-

ute imposing an annual tax on corporations is not the best that could be devised for the purposes of raising revenue does not affect its validity.—*Blackrock Copper Min. & Mill. Co. v. Tingey, Utah*, 98 Pac. 180.

85. **Life Insurance**.—Payment of Premium.—A stipulation in a life policy that it shall not be deemed complete until payment of the first premium in cash may be waived by an agent having power to execute and issue contracts for insurer.—*Life Ins. Co. of Virginia v. Hairston, Va.*, 62 S. E. 1057.

86. **Logs and Logging**.—Right to Turpentine.—Where standing pine timber is owned by one person and the land by another, the turpentine and the right to box the trees held appurtenances of the timber, and not the land.—*Red Cypress Lumber Co. v. Beall, Ga.*, 62 S. E. 1056.

87. **Mandamus**.—Judgment.—A writ, directing a county board to include certain allowed claims in its tax estimate, and denying such writ as to the claims not sufficiently itemized, held not to affect the board's right to attack the claims for fraud nor the petitioner's right to represent them.—*State v. Goodwin, S. C.*, 62 S. E. 1100.

88. **Master and Servant**.—Construction of Scaffold.—A master who delegated the construction of a scaffold on which his servants worked to another was responsible for the manner in which it was constructed.—*Barkley v. South Atlantic Waste Co., N. C.*, 62 S. E. 1073.

89.—**Defective Appliances**.—A telephone booth so constructed that the door cannot be opened from the inside is not a reasonably safe appliance for the use of a servant.—*Georgetown Water, Gas, Electric & Power Co. v. Forwood, Ky.*, 113 S. W. 112.

90.—**Duty of Servant**.—Whether a servant imprisoned in a telephone booth used such care in escaping as might be expected of an ordinarily prudent person under the circumstances held to be for the jury.—*Georgetown Water, Gas, Electric & Power Co. v. Forwood, Ky.*, 113 S. W. 112.

91.—**Duty to Warn Servant**.—That a business might have been carried on in a less dangerous manner is immaterial, where the servant has been sufficiently instructed.—*Mitchell v. Comanche Cotton Oil Co., Tex.*, 113 S. W. 158.

92.—**Employment**.—Generally the right of an employee to commission does not arise until the work is fully performed, no matter how much may have been done in the direction.—*Freeman v. Tiffany Studios*, 113 N. Y. Supp. 64.

93.—**Fellow Servants**.—The negligent failure of a section foreman to inform one of his sectionmen of a scheduled train which afterwards struck such sectionman was the act of a fellow servant.—*House v. Lehigh Valley R. Co.*, 113 N. Y. Supp. 155.

94.—**Injuries to Third Person**.—One who is running an automobile at the time of a collision with a person in the street is prima facie the servant of the owner of the automobile.—*Hiroux v. Baum, Wis.*, 118 N. W. 533.

95. **Municipal Corporations**.—Assessment for Street Improvement.—An assessment for a street improvement according to the frontage, as directed by statute, is valid.—*City of Kingston v. Loftin, N. C.*, 62 S. E. 1069.

96.—**Authority of Officers**.—Persons dealing with officers of a municipality as to matters which are proper subjects of municipal action may show a course of conduct inducing them to honestly assume and rely on the existence of their authority.—*Roberts v. City of St. Marys, Kan.*, 98 Pac. 211.

97.—**Negligence**.—In an action for injury to a child run over in a street, questions of negligence and contributory negligence held for the jury.—*Grotzky v. Rosary Flower Co.*, 113 N. Y. Supp. 117.

98.—**Occupation Tax**.—An ordinance imposing a business tax upon agents of packing houses held not void on the ground that the state had, before its passage, licensed such a business, as a business tax and license are not the same.—*City of Savannah v. Cooper, Ga.*, 63 S. E. 138.

99.—**Special Assessments**.—The fundamental fact on which the validity of a special assess-

ment rests is an increment of benefit to the property taxed, and the property owner must have notice and opportunity to be heard.—*Union Pac. R. Co. v. City of Abilene, Kan.*, 98 Pac. 224.

100.—**Use of Sidewalks by Vehicles.**—The fact that sidewalks had been used by vehicles for many years with the acquiescence of the city would not render the city liable for injuries to drivers because the sidewalks were not fit for vehicles.—*Webster v. City of Vanceburg, Ky.*, 113 S. W. 140.

101.—**Navigable Waters.**—Right to Improve Stream.—The right to improve a navigable stream is a franchise which is not acquired by an act of incorporation, unless authorized by the General Statutes, under which the corporation was organized.—*State v. Portland General Electric Co., Or.*, 98 Pac. 160.

102.—**Negligence.**—Forgetfulness.—Forgetfulness of a known danger is negligence, where the party, under the circumstances, ought to use reasonable care to remember it.—*Miller v. White Bronze Monument Co., Iowa*, 118 N. W. 518.

103.—**Officers.**—Application for Appointment.—Charges of fraud, bad faith, and disregard of law in denying an application for appointment to office under the veteran's preference law must be proven by evidence inconsistent with official probity and suspicion, and inuendo is not enough.—*Ray v. Miller, Kan.*, 98 Pac. 239.

104.—**Pardon.**—Revocation.—Though under Const. art. 3, § 5, the Governor has power to grant conditional pardons, where a pardon has been delivered to a prisoner, and he has complied with a condition precedent to his release thereunder, it cannot be withdrawn.—*Ex parte Williams, N. C.*, 63 S. E. 108.

105.—**Partition.**—Estates Which Can Be Partitioned.—A wife cannot maintain a partition of the lumber into which timber, cut on land owned by herself and husband as tenants by entirety, has been sawed by a purchaser of the timber from the husband.—*Jones v. W. A. Smith & Co., N. C.*, 62 S. E. 1092.

106.—**Partnership.**—Action Between After Dissolution.—An action by partners against a copartner after dissolution to obtain a share of property alleged to have belonged to the partnership, and which defendant had promised to divide, held in the nature of an action for money had and received, requiring proof of the ownership of the partnership.—*Tieman v. Sachs, Or.*, 98 Pac. 163.

107.—**Notes.**—One taking a partnership note from one of the members for the member's individual debt without consulting or apprising the other members of his intention or obtaining their consent has recourse against the member only.—*United States Exch. Bank v. Zimmerman*, 113 N. Y. Supp. 32.

108.—**Telegraph and Telephones.**—A partner in a firm owning and operating a telephone exchange held not, under the evidence, liable to the copartner for damages to his individual toll lines connected with the exchange.—*Bishop v. Riddle, Tex.*, 113 S. W. 151.

109.—**Principal and Agent.**—Liability of Agent to Third Persons.—An agent of a nonresident owner, with power to rent and collect the rents, held not liable for injuries to a pedestrian slipping on ice on the sidewalk.—*Minnis v. Younker Bros., Iowa*, 118 N. W. 532.

110.—**Public Lands.**—Certificate of Entry.—The certificate of final entry of land, issued by the United States land office is evidence of the facts recited therein, including the date on which settlement was made.—*Davis v. Chamberlain, Or.*, 98 Pac. 154.

111.—**Quieting Title.**—Possession of Land.—That plaintiff is not in possession of the land does not prevent him from suing to have a deed adjudged to be a mortgage, to cancel a deed by the grantee to a third party, and to quiet plaintiff's title.—*Tucker v. Witherbee, Ky.*, 113 S. W. 123.

112.—**Railroads.**—Backing Trains at Night.—It is negligence for a railroad to back its train in the night time, along a place used by the public as a common walkway, without a light on the end of the train so as to give warning of its approach.—*Allen v. North Carolina R. Co., N. C.*, 62 S. E. 1079.

113.—**Delay in Transportation.**—A passenger held not entitled to special damages for breach of contract of transportation, where it did not appear that the carrier knew, when contracting for transportation, of the peculiar circumstances by reason of which the special damages were sustained.—*Barney v. Delaware, L. & W. R. Co.*, 113 N. Y. Supp. 138.

114.—**Negligence.**—Where plaintiff, who was injured while standing on a railroad right of way as a permissive licensee, was in a better position to avoid the injury than the employees of the railroad company, plaintiff's contributory negligence was the proximate cause of the injury.—*Muse v. Seaboard Air Line Ry., N. C.*, 63 S. E. 102.

115.—**Sales.**—Bona Fide Purchasers.—Where a seller did not part with the title to goods under an agreement, which was at most a contract of sale thereof, one claiming under the buyer did not acquire title as against the seller, though he had no notice of the rights of the seller.—*Taylor v. Applebaum, Mich.*, 118 N. W. 492.

116.—**Breach of Contract.**—One contracting to construct an electric light sign, having broken an agreement not to construct another sign of the same design, cannot compel his customer to accept the sign.—*Ellison Furniture & Carpet Co. v. Langever, Tex.*, 113 S. W. 178.

117.—**Resale by Seller.**—Where a seller violated the contract and sold the goods with a view of charging the buyer with the difference in price, the buyer held authorized to buy the goods on the resale.—*Plumb v. Bridge*, 113 N. Y. Supp. 92.

118.—**Warranty of Soundness.**—While no specific form of words is essential to a warranty of soundness, the seller must, by some appropriate language, show an intent to make a warranty, and the buyer must understand that one is being given.—*Woodridge v. Brown, N. C.*, 62 S. E. 1076.

119.—**Statutes.**—Construction.—The court, in construing a statute, must adopt that sense which harmonizes best with the context, and which permits in the fullest manner the apparent policy and objects of the Legislature.—*Nance v. Southern Ry. Co., N. C.*, 63 S. E. 116.

120.—**Taxation.**—Assessment.—Where an assessment of property to plaintiff by a board of equalization was void, he was not bound to apply to the board for relief before suing to have the assessment annulled and the tax enjoined.—*Sullivan v. Bitter, Tex.*, 113 S. W. 193.

121.—**Right to Attack Tax Title.**—Where the state claims title to land in the forest preserve under a tax deed, defendant, in an action for trespass, cannot dispute the state's title without showing that he was the owner of the land at the time of the assessment, or that he has title from the former owner.—*People v. Bain*, 113 N. Y. Supp. 27.

122.—**Usury.**—Installments of Interest.—Where promissory notes provided that the interest should be payable annually until paid, interest was allowable on each installment of interest from the time it became due.—*Foley's Guardian v. Hook, Ky.*, 113 S. W. 105.

123.—**Vendor and Purchaser.**—Vendor's Title.—While a vendee in possession under an executory contract of sale is estopped from denying the vendor's title, yet when, so far as the vendee is concerned, the contract is executed from the time of execution, he may assert his adverse possession as against the world, including his vendor.—*Cassin v. Nicholson, Cal.*, 98 Pac. 190.

124.—**Waters and Water Courses.**—Irrigation Rights.—The owners of a mining ditch, who took water therefrom for irrigation, by leasing their interest therein, abandoned their irrigation rights in the ditch.—*Davis v. Chamberlain, Or.*, 98 Pac. 154.

125.—**Wills.**—Specific Legacies.—The subject of a specific legacy being presumptively identifiable when the will was made, the burden is upon a legatee to prove that through facts existing when the will was made the legacy was general.—*In re Getman*, 113 N. Y. Supp. 67.